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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

FILE: B-211626

DATE: July 19, 1983

MATTER OF: J. Michael Tabor--Travel Expenses--
Determination of Actual Permanent Duty
Station

DIGEST:

An employee was paid for his travel and subsistence expenses while allegedly on temporary duty in Washington, D.C., from October 1981 to April 1983. Whether a particular location should be considered a temporary or a permanent duty station is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties to be performed. Under the facts and circumstances of this case, we conclude that employee's permanent duty station was actually Washington, D.C. He is not entitled to temporary duty expenses and his agency is directed to determine his entitlement to transfer expenses and to recoup any overpayments.

INTRODUCTION

Representatives John D. Dingell, as Chairman, and Albert Gore, Jr., as Ranking Majority Member, Subcommittee on Oversight and Investigations of the House Committee on Energy and Commerce, by a letter dated May 10, 1983, requested that we review the claims of Mr. James Michael Tabor--an employee of the Economic Regulatory Administration (ERA), Department of Energy (DOE)--for travel expenses while allegedly on temporary duty from October 1981 to April 1983 away from Dallas, Texas--his designated permanent duty station. The "temporary duty" was performed primarily in Washington, D.C. Our review is undertaken pursuant to our authority to settle accounts and claims set forth in 31 U.S.C. §§ 3526 and 3702 as codified by Pub. L. 97-258, September 13, 1982, 96 Stat. 877, 964 and 970. Both Mr. Tabor and officials representing his agency were given the opportunity to provide us with their views in this matter. While they indicated a desire to do so, nothing has been received.

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We conclude that Mr. Tabor was not actually on temporary duty in Washington from October 1981 to April 1983. During this period, his permanent duty station was actually Washington, D.C. His travel expenses for the period in question should be recomputed on that basis, with any overpayment being recouped.

BACKGROUND

Specifically, Chairman Dingell and Representative Gore requested that we examine Mr. Tabor's travel:

"* * * to determine if it was legal, particularly the airline travel (which appears to have been primarily for allowing the employee to travel for personal purposes), in view of the fact that the employee was not detailed to headquarters and did not otherwise comply with DOE travel policies.
* * *"

In situations where an employee has been receiving travel expenses for temporary duty over a prolonged period at a location away from his designated permanent duty station, all the facts and circumstances must be examined to determine whether the location away from the designated permanent duty station was, in fact, the employee's permanent duty station.

Mr. Tabor had no written orders or other documentation directing him to perform temporary duty in Washington. The only written orders of any type that Mr. Tabor had for the period in question were blanket or open travel authorizations issued on October 1, 1981, for all of fiscal year 1982, and on October 1, 1982, for all of fiscal year 1983. These travel authorizations are the bases for all of Mr. Tabor's travel expense claims under consideration here.

Mr. Tabor spent approximately 18 months in Washington before being formally and permanently assigned there. He performed the duties in Washington of an administrative assistant to the Deputy Administrator of the ERA. This was not an established position. During the alleged temporary duty, Mr. Tabor officially held the position of attorney-advisor in the Office of Special Counsel

(Southwest District), in Dallas. When formally assigned to Washington in April 1983, he was assigned to the position of trial attorney in the ERA's Office of the Solicitor. According to the record, Mr. Tabor continues to perform the duties of an administrative assistant. There is nothing in the record to indicate the special skills or abilities needed for the administrative assistant's position and possessed by Mr. Tabor that would explain his extended temporary duty assignment.

DISCUSSION

An employee is not entitled to temporary duty travel and subsistence expenses--except for local travel--at his permanent duty station. See Peck and Snow, B-198887, September 21, 1981 and 31 Comp. Gen. 289, 290 (1952). The statutes and the Federal Travel Regulations, FPMR 101-7 (September 1981) (FTR), do not contain a definition of a "temporary duty assignment." However, FTR paras. 1-7.6a and 1-8.1a provide that an employee may not be paid his per diem or actual subsistence expenses at his permanent duty station or at the place of abode from which he commutes daily to his official station.

The agency designation of an employee's permanent duty station is not determinative. Frederick C. Welch, B-206105, December 8, 1982, 62 Comp. Gen. _____. In 31 Comp. Gen. 289, 291 (1952), we stated that:

"* * * the authority to determine and designate the post of duty of an officer or employee of the Government includes only the authority to fix the place at which the employee should actually establish official headquarters, and from which he should in fact operate, which, ordinarily is the place where the employee would be required to spend most of his time. The designation of any other place, for the purpose of giving the employee a subsistence allowance for the greater portion, or all, of his time, is not within the authority vested in the head of a department or other administrative official charged with the duty of designating posts of duty of Government employees, and does not entitle an employee to per diem when absent

therefrom and performing duty at another place, which latter place is in fact his post of duty." (Citations omitted.)

We have held that the question of whether an assignment to a particular location should be considered a temporary duty assignment or a permanent change of duty station is a question of fact to be determined from the orders directing the assignment, the duration of the assignment, and the nature of the duties to be performed under the orders. Peck and Snow, previously cited. We shall examine those factors to determine the appropriateness of the designation of Dallas as Mr. Tabor's permanent duty station and the concomitant propriety of having paid Mr. Tabor's travel and subsistence expenses while he was working in Washinton.

1. The orders directing the assignment.

An employee's official duty station is a question of fact, not limited by the agency's designation. Frederick C. Welch, previously cited. In Robert E. Larrabee, 57 Comp. Gen. 147 (1977), we upheld an agency's designation of an employee's temporary duty status for an assignment of 17 months' duration. However, there were special circumstances present in that case. The assignment was initially intended to cover only a 5-month period. It was extended twice, each time for no more than 6 months. At the time the initial orders were issued, it appeared that the assignment was intended to be of sufficiently short duration to constitute a legitimate temporary duty assignment. The orders were twice extended on the legitimate expectation that the assignment would terminate at the end of each extension period. Absent those special circumstances, it is doubtful that we would have accepted the agency's designation of the employee's status on temporary duty for 17 months as appropriate.

No such special circumstances appear to be present in Mr. Tabor's situation. In fact, Mr. Tabor apparently had no written travel orders or other documentation directing his temporary duty at Washington. The lack of any formal agency documentation or orders directing Mr. Tabor to Washington for temporary duty gives the appearance of an attempt to provide for an unwarranted increase in the employee's travel entitlements by the failure to order a change of the employee's permanent duty station to Washington. This seems to

support a finding that Washington was Mr. Tabor's actual permanent duty station during this time, rather than his temporary duty station.

2. The duration of the assignment.

We have viewed temporary duty assignments as being assignments of brief duration. 36 Comp. Gen. 757, 758 (1957). In Peck and Snow, previously cited, two employees had claimed mileage and per diem expenses for an assignment at a site 23 miles from their agency-designated permanent duty station. Where one had been assigned there for 2 months, we viewed it as a temporary duty assignment. However, where the other employee had been assigned there for 2 years and 9 months, we viewed the assignment as having actually involved a permanent change of duty station. Even closer to the length of time involved in Mr. Tabor's situation, in 36 Comp. Gen. 757 (1957), we held that the assignment of members of the uniformed services to Antarctica incident to "Operation DEEPFREEZE II" for an 18-month period, after which time they were to return to their permanent duty station, was far in excess of the duration which reasonably could be considered temporary duty.

Here, Mr. Tabor was assigned to duty in Washington for approximately 18 months, a period far in excess of that which reasonably could be considered temporary duty. This supports a finding that Washington was Mr. Tabor's actual permanent duty station during this time, rather than his temporary duty station.

3. The nature of the duties performed.

We have also examined the nature of the duties performed during the alleged temporary duty assignment to determine whether they are the type of duties normally involved in temporary duty assignments. Examples of such duties would be where personnel are assigned to: a replacement pool for further assignment; a school as a student for the purpose of pursuing a course of instruction of definite duration; or a particular station under conditions contemplating a further assignment to a new duty station or a return to the old duty station. 24 Comp. Gen. 667, 670 (1945).

Here, as stated above, there were no written orders directing the temporary duty assignment of Mr. Tabor in Washington. It is our understanding that Mr. Tabor essentially performed the duties of an administrative assistant to the Deputy Administrator of the Economic Regulatory Administration, who was permanently stationed in Washington. The position of administrative assistant was not an established position; there was no position description creating the position. Nothing in the record before us suggests that the nature of these duties required any special expertise calling for the use of a temporary duty assignment to bring someone to Washington to perform them, nor that qualified individuals were not already available in Washington to be assigned to these duties. There is no indication that Mr. Tabor--an attorney-advisor--had any special knowledge, skills, or abilities needed to perform the duties of an administrative assistant. Therefore, we must conclude that the nature of the duties that were performed here were not the type of duties intended to be performed on a temporary duty assignment. Moreover, there is nothing to indicate that the duties performed by Mr. Tabor were directed to any particular project or in any way time-limited. This supports a finding that Washington was Mr. Tabor's actual permanent duty station during this time, rather than his temporary duty station.

ANCILLARY ISSUES

Chairman Dingell and Representative Gore also asked whether, "* * * an employee may be authorized monthly airline trips to his home station or to other areas for personal purposes and at Government expense where there is no apparent emergency involved." This may be done, but not to areas other than the employee's official station or place of abode from which he would commute daily to his official station but for his temporary duty assignment. Under FTR paras. 1-7.5c and 1-8.4f, an employee may be authorized his voluntary return travel expenses for nonworkdays to his official station or place of abode from which he commutes daily to his official station. The maximum reimbursement allowable for the employee's round-trip transportation and per diem or actual subsistence expenses en route is limited to the travel expenses and per diem or actual subsistence expenses which would have been allowable had the employee remained at his temporary duty station. Voluntary weekend return travel may not be undertaken to areas other than the

employee's, "official station or place of abode from which he commutes daily to the official station." Thomas H. Hall, B-209100, May 9, 1983.

A further question was raised as to the, " * * * legality of the ERA memorandum of June 1981 which is referenced in the Staff memorandum". Apparently, the concern about that ERA memorandum is its provision that, "[e]ach employee on detail will be allowed to return to his or her duty station once every third weekend." Under FTR paras. 1-7.5c and 1-8.4f, agencies also have the discretion to determine, through a cost analysis, that the costs of periodic weekend return travel are outweighed by savings realized through increased efficiency and productivity, and reduced costs for recruitment and retention. On that basis, weekend return travel may be authorized as a necessary travel expense of the agency. 55 Comp. Gen. 1291, 1292 (1976). On this point, the memorandum does not violate any statutes or regulations on its face.

However, that memorandum also provides that:

"When the trip is made, Friday and Monday will be considered travel days. Employees will be expected to work a full day on Thursday and be at work for a full day on Tuesday."

Weekend return travel constitutes an exception to the directive to schedule travel during the employee's regularly scheduled workweek to the maximum extent practicable, contained in 5 U.S.C. § 6101(b)(2)(1976); it should be performed outside the employee's regular duty hours or during periods of authorized leave. 55 Comp. Gen. 1291, 1292 (1976). This principle applies to both directed and voluntary weekend return travel. Thomas D. Salter, B-194166, January 22, 1980. That provision of the memorandum violates this principle; the memorandum should be changed to be consistent with our decision.

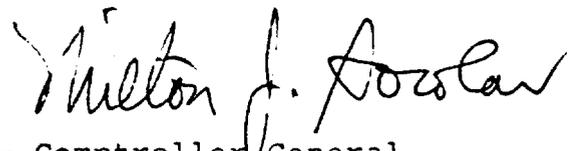
Finally, Chairman Dingell and Representative Gore asked, " * * * whether the ERA approving officials or certifying officers were acting improperly in approving or certifying any voucher, particularly the airline vouchers." We have been advised that DOE's Office of Inspector General is investigating the question of whether any fraud or false

representations were involved in Mr. Tabor's travel and subsistence expenses claims. Any findings of fraud or false representations will be referred by the Inspector General to the Department of Justice for further action. Anyone knowingly and willfully participating in false representations regarding claims against the United States would be in violation of 18 U.S.C. § 1001 (1976). Also there are civil penalties for false or fraudulent claims against the United States. 31 U.S.C. § 3729, as codified by Pub. L. 97-258, September 13, 1982, 96 Stat. 877,978. Responsibility for the enforcement of both statutes is vested in the Department of Justice.

In view of the Inspector General's investigation, further action on our part at this time would be inappropriate.

CONCLUSION

We conclude that Mr. Tabor was not actually on temporary duty in Washington, D.C., from October 1981 to April 1983. Mr. Tabor had no written orders directing him to perform any temporary duty in Washington, he spent approximately 18 months in Washington before being permanently assigned there, and he performed duties which could have been performed by other available Washington personnel of the agency--not specially requiring Mr. Tabor's knowledge, skills, and abilities. Accordingly, during this period, we find that his permanent duty station was Washington, D.C. His travel expenses for the period in question should be recomputed on that basis--disallowing weekend return travel and local travel and subsistence expenses in Washington, while allowing travel expenses away from Washington on official business. Any overpayment of recomputed travel and subsistence expenses during this time must be collected from Mr. Tabor, subject to an offset for any allowable transfer expenses he incurred.



For Comptroller General
of the United States